

## COMMITTEE ACTION SHEET

COUNCIL DOCKET OF Feb. 26, 2008☐ Supplemental ☒ Adoption ☐ Consent ☐ Unanimous Consent Rules Committee Consultant Review

R -

O -

Proposed Ordinance That Regulates the Proximity of Sex Offenders to Children's Facilities / Keep Children Safe Initiative

☒ Reviewed ☐ Initiated By PS&NS On 11/16/05 Item No. 2

## RECOMMENDATION TO:

Accept the Committee Consultant's recommendation to direct the City Attorney to draft an ordinance that prohibits sex offenders from being on or within 300 feet of a public or private school for children, a center or facility that provides day care or children's services, libraries, a video arcade, a playground, park or an amusement center. Forward this issue to Council within 60 days with direction to include the Police Department, the Probation Department, and the District Attorney, San Diego Housing Commission and any affected agencies in the discussion to hear their perspective regarding enforcement issues and Section 8 participation of sex offenders. Direct the City Attorney to report back to Council regarding more aggressive living restrictions, legal issues with respect to current state law allowing local governments to include additional restricted sites and what their parameters are, and direction to return to Council with a draft ordinance.

VOTED YEA: Madaffer, Atkins, Young

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

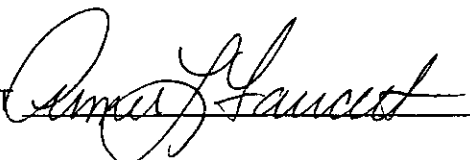
INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

City of National City Council Agenda Statement, City Attorney Memo, and Ordinance

COUNCIL COMMITTEE CONSULTANT



000233

**City of National City, California  
COUNCIL AGENDA STATEMENT**

MEETING DATE November 1, 2005AGENDA ITEM NO. 29

**ITEM TITLE** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY  
AMENDING TITLE 10 OF THE NATIONAL CITY MUNICIPAL CODE BY ADDING CHAPTER 10.63 TO  
REGULATE PROXIMITY OF SEX OFFENDERS TO CHILDREN'S FACILITIES

**PREPARED BY** George H. Eiser, III *ph* **DEPARTMENT** City Attorney  
Ext. 4221

**EXPLANATION**

Please see attached memorandum.

**Environmental Review**   X   N/A

**Financial Statement**

N/A

Account No. \_\_\_\_\_

**STAFF RECOMMENDATION**

Adopt ordinance.

**BOARD / COMMISSION RECOMMENDATION**

N/A

**ATTACHMENTS ( Listed Below )**

Resolution No. \_\_\_\_\_

Memorandum  
Proposed ordinance



**City of National City  
Office of the City Attorney**

1243 National City Boulevard., National City, CA 91950-4301  
George H. Eisner, III - City Attorney  
(619) 336-4220 Fax: (619) 336-4327 TDD: (619) 336-1615

TO: Mayor and City Council  
FROM: Jodi L. Doucette, Special Counsel  
VIA: George H. Eisner, III, City Attorney  
SUBJECT: Sex Offender Proximity Ordinance

DATE: October 24, 2005

Introduction

In response to direction from the City Council, the proposed ordinance has been prepared in order to reduce the potential risk of harm to children of the community from sex offenders. The proposed ordinance would add Chapter 10.63 to the Municipal Code to prohibit sex offenders from being on or within 300 feet of a public or private school for children, a center or facility that provides day care or children's services, a video arcade, a playground, park or an amusement center.

Discussion

Existing California law provides an extensive scheme for regulating the placement of juvenile and adult sex offenders upon their release from incarceration.

California Penal Code, Section 3003, provides that an inmate who is released on parole shall be returned to the county of the last legal place of residence of the inmate prior to his or her incarceration, absent extraordinary circumstances. Section 3003(g) further provides that a such an inmate who is released on parole for the commission of lewd or lascivious acts or continuous sexual abuse of a child shall not be placed nor reside for the duration of the period of parole within 1/4 mile of a private or public school for kindergarteners through eighth graders.

A bill (SB 1051) was introduced in February 2005 to amend Penal Code Section 3003(g) for expanding the distance restriction to one mile. The Senate voted to amend the bill and approved the bill in April, as amended, to expand the distance to 1/2 mile.

Moreover, California Welfare and Institutions Code, Section 6600 et seq., the Sexually Violent Predators Act, provides a comprehensive and coordinated system of placements after incarceration for adults and juveniles adjudicated to be sexually violent predators. The Act generally requires at least a two year commitment after release from incarceration to the State Department of Mental Health for treatment in a secure facility. Section 6608 allows a sexually violent predator to petition for a conditional release to community outpatient treatment. In 2004,

Section 6608.5 was added, requiring that a person who is conditionally released shall be returned to the county of the last legal place of residence of the person prior to his or her incarceration, absent extraordinary circumstances.

Specifically related to juveniles adjudicated a ward of the juvenile court for a sexually related offense, Health and Safety Code, Section 1500 et seq., allows such minors adjudicated wards of the juvenile court to be placed into community care facilities. Senate Bill 1051, referenced above, also proposes to add a Section 1519.6 to the Health and Safety Code to prohibit a licensed community care facility that receives state funds and is located within ½ half mile of any public or private school from accepting a juvenile who has been adjudicated a ward of the court for a sexually related offense.

State law clearly regulates certain residential placements of such offenders and preempts local jurisdictions from placing limits upon the residences of these offenders. Despite such provisions and other related residential regulations, state law, however, appears to lack specific regulations that would prohibit sex offenders from frequenting locations that are primarily used by, or designed for use by, children. These would include preschools, childcare facilities, schools other than grades kindergarten through eighth, video arcades, parks, playgrounds, other similar locations. The existing law also does not regulate such offenders after the terms of their parole, conditional release or juvenile placements or terms end.

As such, the City of National City may place restrictions on sex offenders as to their frequenting certain facilities designed primarily for children's use where the state has failed or chosen not to act. This is not intended to conflict with existing state law but to increase the prohibitions of such offenders to a broader area.

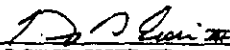
Restrictions on the right to intrastate travel, as this ordinance may arguably impose, have also been addressed in state law. The right to intrastate travel, including intra-municipal travel, is recognized as a basic human right protected by Article I, Sections 7 and 24 of the California Constitution. Probation restrictions barring a criminal from designated areas have been questioned if overly broad. (See, for example, *In re White* (1997) 97 Cal.App.3d 141.) Since the *White* decision, however, the courts have taken more liberal viewpoints on permitting restrictions on the right to travel. The courts have stated that as long as there is a rational relationship between the purpose of the ordinance and a legitimate government objective, the law may be upheld. (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1099.) In the *Tobe* case, the court stated that the right to travel does not endow a person the "right to live or stay where one will." (*Id.* At pg.1103.)

The proposed ordinance language was drafted with right to travel concerns in mind and was narrowly tailored to achieve the legitimate purpose of protecting the children of our community. It does not restrict large areas or the right to travel, per se, but imposes site specific restrictions. The purpose of this regulation is to reduce the potential risk of harm to children of our community by impacting the ability for sex offenders to be in contact with unsuspecting children. This is especially in light of the transitory population in our community which may make difficult the prevention of further recurrence where the victims may fear or be unable to report such crimes.

Because the City's geographical size is eight square miles and the City may not prohibit sex offenders from residing in this City altogether, the prohibited distance of 300 feet from such children's facilities was determined to be appropriate.

Recommendation

In addition to the City Attorney's Office, the Chief of Police has reviewed the proposed ordinance and recommends its adoption.

  
\_\_\_\_\_  
GEORGE H. EISER III,  
City Attorney

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
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Michael J. Aguirre  
CITY ATTORNEY

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

PROPOSED SEX OFFENDER ORDINANCE

**INTRODUCTION**

This City Attorney's office supports the strongest possible regulation of sex offenders permitted under law. The City Attorney's office has prepared a draft ordinance prohibiting sex offenders from being present within 300 feet of a public or private school, day care facility, facility providing children's services, libraries, video arcades, playgrounds, parks, and amusement centers. The ordinance is modeled after one adopted by National City, and adds residency restrictions.

Some of the provisions contained in the draft ordinance are under constitutional attack in the California Supreme Court. There are four cases currently pending in the California Supreme Court:

#07-457 In re E.J., S156933. Original proceeding.

#07-458 In re S.P., S157631. Original proceeding.

#07-459 In re J.S., S157633. Original proceeding.

#07-460 In re K.T., S157634. Original proceeding.

In each of these four matters, the Court issued an order to show cause why residence restrictions imposed by the state law that allow local control of sex offenders (Penal Code section 3003.5) should not be found to be unconstitutional.

We advise that the City regulate residence and presence in separate provisions. If the state law (Jessica's Law) is upheld by the Supreme Court then the City's proposed residence restriction would be enforceable.<sup>1</sup>

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<sup>1</sup> The Court may adopt nuances that may require further modifications and refinement of the proposed ordinance.

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

The regulation of presence is more difficult. The Council can choose to adopt the presence prohibition, which will likely then be subject to immediate constitutional challenge. One important point to consider is the impact of adopting an ordinance that is later declared unconstitutional. Thus, it is imperative that the Council act with care and prudence. It has been the considered opinion of the City Attorney to await the Supreme Court action on Jessica's Law. Once we have the residence ordinance in place supported by the Supreme Court we could then turn to the issue of presence. However, if the Council wants to take a riskier approach it could adopt both the presence and residence restrictions and risk both being found to be unconstitutional. This could result in any party prosecuted under the ordinance found to be unconstitutional bringing a lawsuit against the City.

The Council may recall that the Council adopted the Social Host Ordinance without making sure that it was drafted correctly, only to have it found to be unconstitutional. This set our enforcement effort back for about a year and a half.

Again, this area of the law is unfortunate because the evidence clearly shows that sex offenders are likely to repeat their unlawful behavior. This is why it is especially important that those of us who favor the strictest enforcement not be led astray by those attempting to take political advantage of the problem.

### LEGAL ANALYSIS

There are a number of legal challenges that we will face: preemption, right to travel, privacy, and self-incrimination. It will be argued that the state has likely occupied the field of consequences for sex offender registration, preempting any local action. If Jessica's Law is upheld then this argument will be directed at the presence prohibition of all sex offenders being within 300 feet of all the parks, schools, libraries, and day care facilities in San Diego. Other legal challenges exist, but we believe we could overcome them with a more precise ordinance.

#### Preemption

The argument will be made that absent Jessica's Law,<sup>2</sup> attempts by cities to determine where sex offenders can live or be present are preempted by state law. Article XI, section 5, of the California Constitution allows charter cities to regulate matters of municipal concern, but prohibits charter cities from regulating matters of statewide concern; in these areas, charter cities' laws are preempted. *Johnson v. Bradley*, 4 Cal. 4th 389, 399 (1992); *Howard Jarvis Taxpayers Ass'n. v. City of San Diego*, 120 Cal. App. 4th 374, 385 (2004).

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<sup>2</sup> In referring to "Jessica's Law", this report intends to refer to the residency restrictions unless otherwise noted.

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

Again, the argument will be made that state law preempts local government from regulating criminal aspects of sexual conduct, because of the extensive state regulation of that subject. *Lancaster v. Municipal Court*, 6 Cal. 3d 805, 807 (1972). It is imperative that Jessica's Law be upheld because it changes the basic preemption law and allows cities like San Diego to adopt local controls of sex offenders.

With regard to presence there will be an argument that it is also preempted. Jessica's Law does not address the ability of local jurisdictions to regulate presence. If Jessica's Law is upheld we can argue that preemption is no longer an issue by implication. However, we have prepared the ordinance so that presence and residence are separately addressed to ensure that if we win on residence, arguments against presence are not used to defeat enforcement of the residence restriction.

The Council should know that residence and presence restrictions could be upheld on a point by point basis. Restrictions from schools and libraries may pass Constitutional muster, restrictions from amusement centers may not.

There are other Constitutional challenges that can be made to presence restrictions and those include arguments based on the right to intra-state travel, right to privacy, self-incrimination, vagueness, and over-breadth.

#### **Other Legal Challenges**

Offenders have brought other challenges against sex offender laws in other states. These include: ex post facto claims, double jeopardy claims, cruel-and-unusual-punishment claims, claims that the law illegally interferes with contracts, claims that it amounts to a regulatory taking, claims that it violates freedom of association, and claims that it violates due process because there is no individualized finding of dangerousness before the ordinance applies to each offender. One state Supreme Court has found an unconstitutional taking in the state's sex offender residency restrictions. The statute provided no exemption for sex offenders who purchased a home in a lawful area that met the residency restrictions, but that later became unlawful because a childcare facility, church, or school subsequently moved within 1000 feet of the offender.

#### **San Diego Police Department**

The San Diego Police Department's 290 Unit is responsible for sex offender registration issues. The police department also participates in the Sex Offender Management Council (SOMC) and the Sexual Assault Felony Enforcement Task Force (SAFE).



REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

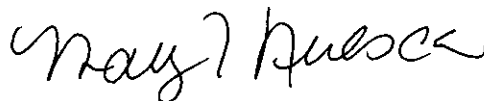
**Options**

1. Adopt the proposed ordinance based on the National City model.
2. Direct the City Attorney to further refine the proposed ordinance to increase the likelihood that it passes constitutional muster.
3. Direct that the matter be brought to City Council or the Public Safety and Neighborhood Services Committee after the California Supreme Court issues its opinion on Jessica's Law.

**CONCLUSION**

The City of San Diego should act under the Constitution to pass the strongest measures possible to regulate sex offenders. The Council must act with care and prudence to ensure any ordinance passed is constitutional. There should be no political grandstanding with this critical law enforcement issue.

Respectfully submitted,



Mary T. Nuesca  
Deputy City Attorney

MTN:aml  
RC-2008-02

## ORDINANCE NO. 2005 -

AN ORDINANCE OF THE CITY COUNCIL  
OF THE CITY OF NATIONAL CITY  
ADDING CHAPTER 10.63 TO THE NATIONAL CITY  
MUNICIPAL CODE TO REGULATE PROXIMITY OF SEX  
OFFENDERS TO CHILDREN'S FACILITIES.

BE IT ORDAINED by the City Council of the City of National City as follows:

Section 1. Title 10 of the National City Municipal Code is hereby amended by adding Chapter 10.63 to read as follows:

## Chapter 10.63

## SEX OFFENDERS PROXIMITY TO CHILDREN'S FACILITIES.

Sections:

- 10.63.100 Purpose.
- 10.63.110 Definitions.
- 10.63.120 Regulations.
- 10.63.130 Violations.

10.63.100 Purpose. Sex offenders pose a clear threat to the children residing, or visiting in our community. Because convicted sex offenders are more likely than any other type of offender to reoffend for another sexual assault, the City Council of the City of National City desires to impose safety precautions in furtherance of the goal of protecting our children. The purpose of this regulation is to reduce the potential risk of harm to children of our community by impacting the ability for sex offenders to be in contact with unsuspecting children in locations that are primarily designed for use by, or are primarily used by children, namely, the grounds of a public or private school for children, a center or facility that provides day care or children's services, a video arcade, a playground, park, or an amusement center. The City of National City desires to add location restrictions to such offenders where the state law is silent.

10.63.110 Definitions.

- A. "Sex Offender" means a person who has been required to register with a governmental entity as a sex offender.
- B. "Children" means those person's who are under the age of eighteen (18) years of age.

10.63.120 Prohibitions. A sex offender is prohibited from being on or within three hundred feet (300') of a public or private school for children, a center or facility that provides day care or children's services, a video arcade, a playground, park, or an amusement center. This prohibition does not apply to a sex offender's place of residence when regulated by state law.

10.63.130 Violations. Any person violating this section is guilty of a misdemeanor. A misdemeanor is punishable by a fine up to one thousand dollars (\$1,000) or by imprisonment for up to one year, or both. The city attorney may reduce the violation to an infraction. An infraction is punishable by (1) a fine not exceeding one hundred dollars (\$100) for a first violation; (2) a fine not exceeding two hundred dollars (\$200) for a second violation; (3) a fine not exceeding five hundred dollars (\$500) for each additional violation of this provision. A person is guilty of a separate offense for each and every day during which a violation occurs.

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

\_\_\_\_\_  
Nick Inzunza, Mayor

ATTEST:

\_\_\_\_\_  
Michael Dalla, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
George H. Eiser, III  
City Attorney

THE COMMITTEE ON PUBLIC SAFETY AND NEIGHBORHOOD SERVICES  
OF THE CITY COUNCIL OF THE CITY OF SAN DIEGO

ACTIONS FOR  
WEDNESDAY, NOVEMBER 16, 2005, AT 2:00 P.M.

COUNCIL COMMITTEE ROOM (12TH FLOOR), CITY ADMINISTRATION  
BUILDING  
202 C STREET, SAN DIEGO, CALIFORNIA

For information, contact Dan Coffey, Council Committee Consultant  
202 C Street, 3rd Floor, San Diego, CA 92101  
Email: dcoffer@sandiego.gov  
619-533-3980

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NON-AGENDA PUBLIC COMMENT:

ACTION: None received.

COUNCIL COMMENT:

ACTION: None received.

ADOPTION AGENDA

ITEM-1: In the matter of BROWN FIELD AND MONTGOMERY FIELD AIRPORTS /  
STATUS REPORT ON THE FOLLOWING ITEMS:

- a. Montgomery Field Master Plan.
- b. Brown Field Airport Leases, FAA requirements and financial status report.
- c. Request for Proposal (RFP) for the long-term development and operation of Montgomery Field Airport.
- d. Comprehensive report of the Airport Enterprise Fund (including all revenue sources).
- e. Cost analysis to complete the Heliport at Montgomery Field.
- f. Option of relocating Fire Station 28 to Montgomery Field and collocating with the Heliport.
- g. A certification letter that states the Airport Enterprise Funds has the revenues to accept the \$1 million federal grant for the Heliport.

(See CMR 05-224; Councilmember Madaffer's November 15, 2005, memo #M-05-11-06 and #M-05-11-08; Gerald Blank's November 16, 2005, letter; Montgomery Field / Brown Field maps; Ronald J. Cozad's November 15, 2005, letter; Rick Beach's November 11, 2005, letter; Councilmember Madaffer's October 24, 2005, memo; Tony Garcia's July 25, 2005, letter;

**ACTIONS**  
**Committee on Public Safety & Neighborhood Services**  
**November 16, 2005**

- 2 -

Meridith A. Marquis' November 7, 2005, letter; Airports Advisory Committee Terms of Reference; Council Policy 700-15)

ACTION: Motion by Councilmember Young, second by Deputy Mayor Atkins to direct management staff to report back to the Committee in March 2006 on the items articulated in the Chair's November 15, 2005, memo, No. M-05-11-06 as follows:

- 1) Direct the City Auditor to conduct a comprehensive audit of the Airport Enterprise Fund including all grants.
- 2) Identify all aviation and non-aviation leases, including sub-leases at Montgomery and Brown Field Airports.
- 3) Take corrective action to resolve non-aeronautical activities at Brown Field.
- 4) Update the Montgomery and Brown Field Master Plans.
- 5) Complete the Heliport at Montgomery Field for the Fire-Rescue Helicopter.
- 6) Work with the Federal Aviation Administration regarding the long-term development of Montgomery and Brown Field Airports.

Direct the City Attorney to report back on any potential conflict of interest issues or suggestions with respect to the Airports Advisory Board; and direct staff to meet with the Federal Aviation Administration (FAA), including the Fire Department, for further discussion.

VOTE: 3-0; Madaffer-yea, Atkins-yea, Young-yea

ITEM-2: In the matter of a PROPOSED ORDINANCE THAT REGULATES THE PROXIMITY OF SEX OFFENDERS TO CHILDREN'S FACILITIES / KEEP CHILDREN SAFE INITIATIVE.

(See City of National City Council Agenda Statement, City Attorney Memo, and Ordinance)

ACTION: Motion by Councilmember Young, second by Deputy Mayor Atkins to accept the Committee Consultant's recommendation to direct the City Attorney to draft an ordinance that prohibits sex offenders from being on or within 300 feet of a public or private school for children, a center or facility that provides day care or children's services, libraries, a video arcade, a playground, park or an amusement center.

**ACTIONS**  
**Committee on Public Safety & Neighborhood Services**  
**November 16, 2005**

- 3 -

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Forward this issue to Council within 60 days with direction to include the Police Department, the Probation Department, the District Attorney, San Diego Housing Commission and any affected agencies in the discussion to hear their perspective regarding enforcement issues and Section 8 participation of sex offenders.

Direct the City Attorney to report back to Council regarding more aggressive living restrictions, legal issues with respect to current state law allowing local governments to include additional restricted sites and what their parameters are, and direction to return to Council with a draft ordinance.

VOTE: 3-0; Madaffer-yea, Atkins-yea, Young-yea

Jim Madaffer  
Chair

000247

## REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO **When Complete, Double-Click to Convert Form Fields to Text Fields**1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)

331

TO:  
CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

Public Safety &amp; Neighborhood Services Committee

3. DATE:

2/26

4. SUBJECT:

Preparation of Ordinance Restricting Presence and Residence of Sex Offenders

5. PRIMARY CONTACT (NAME, PHONE &amp; MAIL STA.)

6. SECONDARY CONTACT (NAME, PHONE &amp; MAIL STA.)

7. CHECK BOX IF REPORT TO  
COUNCIL IS ATTACHED ☒

## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND			
DEPT.			
ORGANIZATION			
OBJECT ACCOUNT			
JOB ORDER			
C.I.P. NUMBER			
AMOUNT			

9. ADDITIONAL INFORMATION / ESTIMATED COST:

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT			8	DEPUTY CHIEF		
2				9	COO		
3				10	CITY ATTORNEY	<i>Traugher</i>	1-22-08
4	LIAISON OFFICE			11	ORIGINATING DEPARTMENT		
5				DOCKET COORD: _____ COUNCIL LIAISON: _____			
6				<input checked="" type="checkbox"/>	COUNCIL PRESIDENT	<input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION	
7					<i>ms</i>	<input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 2/26/08	

11. PREPARATION OF:

☐ RESOLUTION(S)☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

An Ordinance amending Chapter 5, Article 8 of the San Diego Municipal Code by adding Division 6, titled the "Child Protection Act"; adding sections 58.0601-0609

11A. STAFF RECOMMENDATIONS:

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): ALL

COMMUNITY AREA(S): ALL

ENVIRONMENTAL IMPACT: This activity is not a "project" and is therefore not subject to CEQA per CEQA Guidelines Section 15060 (c) (2) .

HOUSING IMPACT:

OTHER ISSUES:

## CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 8, OF  
THE SAN DIEGO MUNICIPAL CODE BY ADDING  
DIVISION 6, TITLED CHILD PROTECTION ACT, AND BY  
ADDING SECTIONS 58.0601, 58.0602, 58.0603, 58.0604,  
58.0605, 58.0606, 58.0607, 58.0608, AND 58.0609, ALL  
RELATED TO THE CHILD PROTECTION ACT.

The purpose of this ordinance is to protect children from sex offenders by restricting them from being within 300 feet of places where children gather: amusement centers, arcades, childcare facilities, libraries, playgrounds, parks, and schools, and to add those locations to the 2000 foot restriction contained in Penal Code section 3003.5.

The clerk is instructed to insert the effective date of this ordinance, once known, in the blanks in sections 58.0607 and 58.0609.

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

MTN:aml  
01/10/08  
Or.Dept:Police  
O-2008-89



ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 8, OF  
THE SAN DIEGO MUNICIPAL CODE BY ADDING  
DIVISION 6, TITLED CHILD PROTECTION ACT, AND BY  
ADDING SECTIONS 58.0601, 58.0602, 58.0603, 58.0604,  
58.0605, 58.0606, 58.0607, 58.0608 AND 58.0609, ALL  
RELATED TO THE CHILD PROTECTION ACT.

WHEREAS, the City of San Diego places a high priority on public safety, and  
particularly the safety of its children, and

WHEREAS, sex offenders pose a unique threat to public safety due to high recidivism  
rates; and

WHEREAS, according to a 1998 report by U.S. Department of Justice, sex offenders are  
the least likely to be cured and the most likely to reoffend and prey on the most innocent  
members of our society, and more than two-thirds of victims of rape and sexual assault are under  
the age of 18 and sex offenders have a higher recidivism rate for their crimes than any other type  
of violent felon; and

WHEREAS, California voters approved Proposition 83, an initiative known as "Jessica's  
Law" on November 7, 2007; and

WHEREAS, Jessica's Law made a number of changes to various statutes governing sex  
offenders; and

WHEREAS, one of the provisions in Jessica's Law makes it unlawful for registered sex  
offenders to reside within 2000 feet of any public or private school, or parks where children

regularly gather and further allows municipal jurisdictions to enact ordinances that further restrict where registered sex offenders reside; and

WHEREAS, the City believes that one of the goals of Jessica's Law was to enable people to better protect themselves and their families, and to create ordinances furthering these goals; and

WHEREAS, California state law does not address or prevent sex offenders from being in or near places where children frequently gather, such as parks and amusement centers, nor does it prohibit sex offenders from being near schools; and

WHEREAS, the City finds that children are in need of further protection from sex offenders; and

WHEREAS, the City believes restricting sex offender access to the locations where children gather will further public safety; and

WHEREAS, the City intends that this ordinance be used to protect children, and not to harass or otherwise unreasonably restrict abiding law sex offenders; and

WHEREAS, it is the intent of this ordinance to enact stricter residency requirements than contained in Jessica's Law by criminalizing the offense and by adding other locations; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 8, of the San Diego Municipal Code is amended by adding a new Division 6, titled "Child Protection Act" and adding new Sections 58.0601, 58.0602, 58.0603, 58.0604, 58.0605, 58.0606, 58.0607, 58.0608, and 58.0609, to read as follows:

**§58.0601 Purpose**

It is the purpose and intent of the Child Protection Act (CPA) to protect children from registered sex offenders by limiting their access to locations where children gather. It is intended to reduce the risk of harm to children by impacting the ability of sex offenders to be in contact with children. It is further the intent of this ordinance to provide additional restrictions beyond those provided for in Proposition 83, Jessica's Law (effective November 8, 2007) by adding locations to the residence restrictions of Jessica's Law, by restricting sex offenders from certain limited locations, and by allowing for both criminal and civil remedies, pursuant to Sections 12.0201-12.0205 of this Code. It is not the intent of this ordinance to allow conduct otherwise prohibited by state law, or to contradict state law.

**§58.0602 Definitions**

For purposes of this Division:

"*Amusement center*" means any establishment open to the public who provides entertainment directed at *minors*, or whose play equipment is primarily used by *minors*. It includes places like Chuck E. Cheese, Sea World, the San Diego Zoo and children's museums. It includes but is not limited to establishments that provide activities like gymnastics, laser tag, art classes, so long as the primary users of the establishment are *minors*. It does not include restaurants, movie theaters or shopping malls. It does not include businesses whose primary business is to sell toys or games or other similar products primarily used by *minors*.

*"Arcade"* means the same as it does in Section 33.1635.

*"Child day care facility"* means any facility licensed as such pursuant to California Health and Safety Code, section 1596.750, except it does not include a *"small family day care home"* as defined in California Health and Safety Code section 1596.78(c).

*"Library"* means any public library operated by the City of San Diego.

*"Minor"* means any person less than eighteen (18) years of age.

*"Offense"* means any criminal offense requiring registration under California Penal Code section 290.

*"Playground"* means any outdoor premises or grounds owned or operated by the City that contains any play or athletic equipment used or intended to be used by *minors*.

*"Park"* means the same as it does for purposes of California Penal Code section 3003.5(b).

*"Registered Sex Offender"* and *"sex offender"* means any person required to register pursuant to California Penal Code section 290.

*"Reside" or "Residence"* means the same as it does for purposes of California Penal Code section 3003.5(b).

*"School"* means any public or state licensed private elementary or secondary school, attendance at which satisfies the compulsory education laws of the State of California. It does not include a residence where parents or guardians provide home schooling. This definition shall be interpreted to be consistent with California Penal Code section 3003.5(b).

**§58.0603 Restricted Areas for Sex Offenders-Presence**

It is unlawful for any *registered sex offender* to be within 300 feet of any of the following places:

- (a) *Amusement Center*
- (b) *Arcade*
- (c) *Child Day Care Facility*
- (d) *Library*
- (e) *Playground*
- (f) *Park*
- (g) *School*

**§58.0604 Restricted Areas for Sex Offenders-Residency**

It is unlawful for any *registered sex offender* to be *reside* within 2000 feet of any of the following places:

- (a) *Amusement Center*
- (b) *Arcade*
- (c) *Child Day Care Facility*

(d) *Library*

(e) *Playground*

(f) *Park*

(g) *School*

**§58.0605 Measure of Distance**

The 300-foot buffer zone and the 2000- foot buffer zone are measured in a straight line, in all directions, without regard to intervening structures, from the property line of the places listed in Section 58.0603(a) through (g), and 58.0604 (a) through (g).

**§58.0606 Other Establishment Restrictions for Sex Offenders**

It is unlawful for any *registered sex offender* to enter in to or remain in any *amusement center* contained within a non-restricted establishment, such as the play area of a fast food restaurant, or a video game arcade establishment in a shopping mall.

**§58.0607 Exemptions**

Any particular subsection of 58.0603 does not apply to any *registered sex offender* who is currently on probation or parole for an *offense* for which registration is required, and whose conditions of probation or parole would otherwise violate that subsection.

A *registered sex offender* may be on or within 300 feet of a school if that *sex offender* is a parent or guardian of a child attending that school, or is a student at the school or has prior written permission for the entry from the chief

administration office of that school. This exemption does not apply to the *residence* restriction, only to the presence restriction. This exemption is intended to be co-extensive with Penal Code section 626.8, and is not intended to authorize any conduct prohibited by Penal Code section 626.8.

Any *registered sex offender* who lives within 300 feet of any of the places listed in Section 58.0603 on \_\_\_\_\_ is not required to move. However the *sex offender* must proceed directly to and from her or her *residence*, and not loiter or remain within the 300 foot zone.

Any *registered sex offender* who *resides* outside 2000 feet of any of the places listed in Section 58.0604 on \_\_\_\_\_, is not required to move if one of the entities listed in 58.0604 moves within 2000 feet of the *sex offender's residence* after \_\_\_\_\_.

#### **§58.0608      Defenses**

It is an affirmative defense to Section 58.0603 when the person charged can show that traveling through the 300 foot zone was the only reasonable way to reach another destination. Loitering or unnecessarily remaining within the zone defeats the availability of the defense. For example, if a person takes a bus to work and the bus drives by or stops near a park, such person can use this subsection if charged with a crime under this section. Conversely, if a person walks to work, and must pass within 300 feet of a library, and if the person stands in front of the library rather than proceeding to his or her destination, the defense is not available. Entering into the prohibited establishment defeats the availability of the defense.

**§58.0609 Effective Date for Residency Requirements**

The residency restriction contained in Section 58.0604 applies to any person who is required to register as a *sex offender* based on a crime committed on or after the \_\_\_\_\_.


BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 4. That the clerk is instructed to insert the effective date of this ordinance, once known, in the blanks in sections 58.0607 and 58.0609.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By   
Mary Nussca  
Deputy City Attorney

MN:aml  
01/17/08  
Dept: PD  
O-2008-89



I hereby certify that the following Ordinance was passed by the Council of the City of San Diego, at its meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

## STRIKEOUT ORDINANCE

~~OLD LANGUAGE: STRIKEOUT~~NEW LANGUAGE: DOUBLE UNDERSCORE

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 8, OF  
THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION  
6, TITLED CHILD PROTECTION AT, AND BY ADDING  
SECTIONS 58.0601, 58.0602, 58.0603, 58.0604, 58.0605, 58.0606,  
58.0607, 58.0608 AND 58.0609 ALL RELATED TO THE CHILD  
PROTECTION ACT

§58.0601Purpose

It is the purpose and intent of the Child Protection Act (CPA) to protect  
children from registered sex offenders by limiting their access to locations  
where children gather. It is intended to reduce the risk of harm to children  
by impacting the ability of sex offenders to be in contact with children. It  
is further the intent of this ordinance to provide additional restrictions  
beyond those provided for in Proposition 83, Jessica's Law (effective  
November 8, 2007) by adding locations to the residence restrictions of  
Jessica's Law, by restricting sex offenders from certain limited locations,  
and by allowing for both criminal and civil remedies, pursuant to Sections  
12.0201-12.0205 of this Code. It is not the intent of this ordinance to  
allow conduct otherwise prohibited by state law, or to contradict state law.

§58.0602Definitions

For purposes of this Division:

"Amusement center" means any establishment open to the public who  
provides entertainment directed at minors, or whose play equipment is

primarily used by minors. It includes places like Chuck E. Cheese, Sea World, the San Diego Zoo and children's museums. It includes but is not limited to establishments that provide activities like gymnastics, laser tag, art classes, so long as the primary users of the establishment are minors. It does not include restaurants, movie theaters or shopping malls. It does not include businesses whose primary business is to sell toys or games or other similar products primarily used by minors.

"Arcade" means the same as it does in Section 33.1635.

"Child day care facility" means any facility licensed as such pursuant to California Health and Safety Code, section 1596.750, except it does not include a "small family day care home" as defined in California Health and Safety Code section 1596.78(c).

"Library" means any public library operated by the City of San Diego.

"Minor" means any person less than eighteen (18) years of age.

"Offense" means any criminal offense requiring registration under California Penal Code section 290.

"Playground" means any outdoor premises or grounds owned or operated by the City that contains any play or athletic equipment used or intended to be used by minors.

"Park" means the same as it does for purposes of California Penal Code section 3003.5(b).

"Registered Sex Offender" and "sex offender" means any person required to register pursuant to California Penal Code section 290.

"Reside" or "Residence" means the same as it does for purposes of California Penal Code section 3003.5(b).

"School" means any public or state licensed private elementary or secondary school, attendance at which satisfies the compulsory education laws of the State of California. It does not include a residence where parents or guardians provide home schooling. This definition shall be interpreted to be consistent with California Penal Code section 3003.5(b).

**§58.0603**      **Restricted Areas for Sex Offenders-Presence**

It is unlawful for any registered sex offender to be within 300 feet of any of the following places:

- (a) Amusement Center
- (b) Arcade
- (c) Child Day Care Facility
- (d) Library
- (e) Playground
- (f) Park
- (g) School

**§58.0604**      **Restricted Areas for Sex Offenders-Residency**

It is unlawful for any registered sex offender to be reside within 2000 feet of any of the following places:

- (a) Amusement Center

(b) Arcade

(c) Child Day Care Facility

(d) Library

(e) Playground

(f) Park

(g) School

**§58.0605 Measure of Distance**

The 300-foot buffer zone and the 2000- foot buffer zone are measured in a straight line, in all directions, without regard to intervening structures, from the property line of the places listed in Section 58.0603(a) through (g), and 58.0604 (a) through (g).

**§58.0606 Other Establishment Restrictions for Sex Offenders**

It is unlawful for any registered sex offender to enter in to or remain in any amusement center contained within a non-restricted establishment, such as the play area of a fast food restaurant, or a video game arcade establishment in a shopping mall.

**§58.0607 Exemptions**

Any particular subsection of 58.0603 does not apply to any registered sex offender who is currently on probation or parole for an offense for which registration is required, and whose conditions of probation or parole would otherwise violate that subsection.

A registered sex offender may be on or within 300 feet of a school if that sex offender is a parent or guardian of a child attending that school, or is a student at

the school or has prior written permission for the entry from the chief administration office of that school. This exemption does not apply to the residence restriction, only to the presence restriction. This exemption is intended to be co-extensive with Penal Code section 626.8. and is not intended to authorize any conduct prohibited by Penal Code section 626.8.

Any registered sex offender who lives within 300 feet of any of the places listed in Section 58.0603 on \_\_\_\_\_ is not required to move. However the sex offender must proceed directly to and from her or her residence, and not loiter or remain within the 300 foot zone.

Any registered sex offender who resides outside 2000 feet of any of the places listed in Section 58.0604 on \_\_\_\_\_ is not required to move if one of the entities listed in 58.0604 moves within 2000 feet of the sex offender's residence after \_\_\_\_\_.

#### **§58.0608**

#### **Defenses**

It is an affirmative defense to Section 58.0603 when the person charged can show that traveling through the 300 foot zone was the only reasonable way to reach another destination. Loitering or unnecessarily remaining within the zone defeats the availability of the defense. For example, if a person takes a bus to work and the bus drives by or stops near a park, such person can use this subsection if charged with a crime under this section. Conversely, if a person walks to work, and must pass within 300 feet of a library, and if the person stands in front of the library rather than proceeding to his or her destination, the defense is not

available. Entering into the prohibited establishment defeats the availability of the defense.

**§58.0609****Effective Date for Residency Requirements**

The residency restriction contained in Section 58.0604 applies to any person who is required to register as a *sex offender* based on a crime committed on or after the

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MTN:aml  
01/10/08  
Or.Dept:Police  
SO-2008-89